IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15713 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

POPATBHAI P JOSHI

Versus

DIRECTOR OF MUNICIPALITIES

Appearance:

1. Special Civil Application No. 15713 of 2004

MR GM JOSHI for Petitioner No. 1

MR LB DABHI AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 15/12/2004

ORAL JUDGEMENT

1. RULE. Mr.L B Dabhi learned AGP appears and waives service of rule on behalf of the respondent. With the consent of learned counsel for the parties, the matter is finally heard today.

2. The petitioner has preferred this petition in order to quash and set aside the order dated 01/12/2004 passed by the respondent, at Annexure-E to the petition, whereby the petitioner was removed from the post of President as well as Councillor of the Nagarpalika.

3. The petitioner was elected as the President and Councillor of Dhanera Nagarpalika in the year 2003. The said Nagarpalika was administered by the Administrator, appointed by the Government, till the year 2002. Pursuant to the election of the petitioner as the President and Councillor of the said Nagarpalika, the General Body of the Nagarpalika passed a unanimous Resolution in respect of the lands which were adjacent to the lands given on temporary lease by the Administrator, as the occupiers of the said lands were living adjacent to the said plots. The said Resolution and the action taken pursuant thereto was approved by the General Body of the Nagarpalika in its meeting dated 22/06/2004.

4. Pursuant to the passing of the said Resolution, the petitioner was served with a Show-Cause Notice dated 04/09/2004 purporting to be one under Section 37 of the Gujarat Municipalities Act, at Annexure-A to the petition. The petitioner appeared before the respondent with his Advocate as directed by the respondent. The matter was adjourned for several dates. Lastly, the matter was fixed on 01/12/2004. On 01/12/2004, in spite of the fact that the Advocate for the petitioner had filed a sick note and the same was presented to the respondent Authority, the impugned order came to be passed against the petitioner. Hence, this petition.

5. Mr.G M Joshi learned advocate for the petitioner has submitted that the Resolution which came to be passed was a decision of the General Body of the Nagarpalika and it was not an individual decision, and therefore, it cannot be said that it was an individual action of the petitioner in exercise of his powers as the President or the Councillor of the Nagarpalika. He has contended that the impugned order at Annexure-E to the petition was passed in absence of the Advocate for the petitioner as the Advocate had filed a sick note on that particular day. He has contended that the authority ought to have waited for atleast one day before passing the impugned order at Annexure-E to the petition.

6. Mr.Joshi for the petitioner has relied upon a decision of the Apex Court in the case of Rais Ahmad v. State of U.P. and Ors. reported in (1999) 6 S.C.C. p.391, wherein it has been observed that the adjournment

of a case on the "illness slip" reflects the Court's respect for the counsel and its consciousness that a lawyer or counsel, though an officer of the Court, is nevertheless a human being who can fall ill and the "illness slip" reflects the faith and trust the lawyer has in the Court and that the Court would on that ground adjourn the case. In the present case, in spite of the sick note filed by the Advocate for the petitioner, the respondent authority has passed the impugned order without hearing the Advocate for the petitioner.

7. I have heard learned counsel for the parties and have perused the documents on record. From the averments made in the petition, it is clear that the impugned order at Annexure-E to the petition was passed when the Advocate for the petitioner was not present on the ground of his illness. When the Advocate for the petitioner had filed a sick note, the respondent Authority ought to have granted at least one day's time, before passing the impugned order.

8. Against the said non-grant of time, the petitioner had even preferred a writ petition before this Court being Special Civil Application No.15631 of 2004. The said petition was withdrawn in view of the fact that before this Court could pass any order in the said petition, the impugned order dated 01/12/2004 was passed by the respondent authority.

9. The impugned order is passed, admittedly, without hearing the petitioner, inasmuch as he was removed from the post of the President and the Councillor of the Nagarpalika. The allegations made against the petitioner are required to be defended by someone, other than the petitioner. In that view of the matter, the petitioner was justified in engaging an Advocate and in absence of the Advocate because on his illness, if the order is passed, then in my opinion, the order passed would be contrary to the observations made by the Apex Court in the case of The Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni and ors. reported in A.I.R. 1983 S.C. p.109. In that case, in an inquiry before a domestic tribunal, the delinquent officer was pitted against a legally trained mind and therefore he had sought permission to appear through a legal practitioner. The request of the delinquent officer was turned down. It was held that turning down of the said request amounted to denial of a reasonable request to defend himself and the essential principles of natural justice were violated.

10. No prejudice would have been caused to either of the parties, if the matter was adjourned for a day or two. Only on that ground, the order passed by the respondent authority is required to be quashed and set aside.

11.1 For the foregoing reasons, the petition is allowed. The order dated 01/12/2004 passed by the respondent authority, at Annexure-E to the petition, is ordered to be quashed and set aside. The matter before the respondent, Director of Municipalities, is restored to file. However, it is made clear that the petitioner will not exercise any powers while holding the post of the President and Councillor of the Nagarpalika, without any Resolution being passed and approved to that effect by the General Body of the Nagarpalika. The petitioner will not spend any funds of the Nagarpalika, contrary to the Resolution passed and approved by the General Body of the Nagarpalika.

11.2 The petitioner is directed to approach the respondent, Director of Municipalities, on 27/12/2004 at 12.00 noon along with his Advocate. No further time will be granted to the petitioner as sufficient time has already been granted to the petitioner. The respondent, Director of Municipalities, shall hear the matter afresh and decide it on merits after hearing the advocate for the petitioner and without being influenced by the fact that this Court has quashed its earlier order. This Court has not considered the matter on merits while quashing the earlier order of the respondent - Director of Municipalities. The respondent, Director of Municipalities is present in the Court and the order has been passed in his presence.

12. With the above directions, the petition stands allowed. Rule is made absolute accordingly. Direct service permitted.

(K. S. Jhaveri, J.)
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